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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180517486-8999-02]

RIN 0648-XG930

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Groups Retention Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 25 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. NMFS is taking this action after considering the regulatory criteria regarding inseason adjustments to trip limits. The retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2019 fishing season, unless NMFS announces another adjustment to the retention limit or a fishery closure with a separate notification in the **Federal Register**. This retention limit adjustment will affect anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective at 11:30 p.m. local time April 1, 2019, through the end of the 2019 fishing season on December 31, 2019, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.24(a)(8), NMFS may adjust the commercial retention limit in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors see § 635.24(a)(8)(i)-(vi). After considering these criteria as discussed below, we have concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year. Since landings for hammerhead sharks have reached approximately 24 percent of the quota and are projected to reach 80 percent by July, NMFS is reducing the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar per vessel per trip.

NMFS analyzed whether to reduce the retention limit for LCS other than sandbar sharks, considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8), which includes:

- The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports.

Based on dealer reports, 6.54 mt dw or 24 percent of the 27.1 mt dw shark quota for the hammerhead shark management group has already been landed in the Atlantic region. This means that approximately 76 percent of the quota remains.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Dealer reports indicate a high level of average daily landings. At this level, hammerhead sharks are being harvested too quickly to ensure fishing opportunities throughout the season. If the current trip limit is left unchanged, hammerhead sharks would likely be harvested at such a high rate that there would not be enough hammerhead shark quota remaining to keep the fishery open year-round, precluding equitable fishing opportunities for the entire Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach, or are projected to reach 80 percent of the quota, NMFS would have to close the hammerhead shark management group as well as the linked aggregated LCS management group, as required by existing regulations. Current catch rates would likely result in reaching 80 percent by July. A closure would preclude fishing opportunities in the Atlantic region for the remainder of the year.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Reducing the retention limit for the aggregated LCS and hammerhead management groups from 25 to 3 LCS per trip would allow for fishing opportunities later in the year consistent with the FMP's objectives to ensure equitable fishing opportunities throughout the fishing season and to limit bycatch and discards.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. As a result, by slowing the harvest and reducing landings on a per-trip basis, both fisheries could remain open for the remainder of the year.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

Given the remaining quota and current catch rates, NMFS has concluded that the fishery is harvesting the hammerhead shark quota too quickly to ensure equitable fishing opportunities throughout the Atlantic. If the current trip limit is left unchanged, hammerhead sharks would likely be harvested at such a high rate that there would not be enough hammerhead shark quota remaining to keep the fishery open year-round. NMFS previously told the regulated community in a Federal Register notification (83 FR 60777) that a goal of this year's shark fishery is to ensure year-round shark fishing opportunities, but if the harvest of hammerhead shark quota is

not slowed, we estimate that the fishery would reach 80 percent by July. Closing the fishery so early would prevent fishermen from the Northern part of the Atlantic region from having a reasonable opportunity to harvest the aggregated LCS and hammerhead quota, because the aggregated LCS and hammerhead management groups generally have not migrated to that area until later in the year.

On November 27, 2018 (83 FR 60777), NMFS announced that the aggregated LCS and hammerhead shark management groups for the Atlantic region would open on January 1 with a quota of 168.9 metric tons (mt) dressed weight (dw) (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. In that final rule, NMFS also indicated that if it appeared that the aggregated LCS or hammerhead shark management group quota was being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish, (*e.g.*, if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit for LCS other than sandbar sharks. Dealer reports through March 22, 2019, indicate that 6.54 mt dw or 24 percent of the available quota for the hammerhead shark management group has been harvested. If the average landings rate for the hammerhead shark management group reflected in the dealer reports continues, landings could reach 80 percent of the quota by the beginning of July. Once the landings reach 80 percent of the quota, NMFS would close both the aggregated LCS and hammerhead management group because they are linked under the regulations (§ 635.28(b)(3)).

Accordingly, as of 11:30 p.m. local time April 1, 2019, NMFS is reducing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 25 LCS other than sandbar

sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. If the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, then they are exempted from the retention limit adjustment.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip until NMFS announces via notification in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Atlantic region.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Providing prior notice and an opportunity for comment is impracticable because the catch and landings that need to be reduced are ongoing and must be reduced immediately to meet conservation and management objectives for the fishery. Continued fishing at those levels during the time that notice and comment takes place would result in the much of the quota being

landed and could result in a very early closure of the fishery, contrary to the objectives of the existing conservation and management measures in place for those species. These objectives include ensuring that fishing opportunities are equitable and that bycatch and discards are minimized. Allowing fishing to continue at the existing rates even for a limited time is contrary to these objectives and would thus be impracticable. It would also be contrary to the public interest because, if the quota continues to be caught at the current levels, the quota will not last throughout the remainder of the fishing season and a large number of fishermen would be denied the opportunity to land sharks from the quota. Furthermore, continued catch at the current rates, even for a limited period, could result in eventual quota overharvests, since it is still so early in the fishing year. The AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) for the same reasons. This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866. NMFS has concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 28, 2019.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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